STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-2641

November 4, 1980

Mr. E. D. O---
XXXXX E. --- Road
---, OR XXXXX

Re:	R--- A--- E---	SR -- XX-XXXXXX
	N--- F--- S---	SR -- XX-XXXXXX
	R--- A--- Inc.	SR -- XX-XXXXXX
	P--- V--- A---, Inc.	SR -- XX-XXXXXX
	N--- S--- A--- Inc.	SR -- XX-XXXXXX
	H--- F--- S---	

Dear Mr. O---:

Your September 12, 1980 letter to Assistant Chief Counsel Gary Jugum was referred to me for reply. You enclosed a copy of your letter of the same date to the Board's Redding Branch Office Supervisor Robert L. Vogt stating the guidelines which you believe should be used in current audits of aircraft dealers. Your letter to Mr. Jugum requests the legal staff's comment on the suggested guidelines.

The aircraft dealers in question purchased aircraft for resale and issued resale certificates to their vendors. Certain of the aircraft dealers are also air-taxi operators (FAR Part 135) and perform charter operations using aircraft from their resale inventory. They also make other business or personal use of their inventory aircraft. We assume that the aircraft are also used frequently for demonstration or display to prospective purchasers.

Given such facts, you believe that each use of the aircraft by the dealer should be considered individually and a decision reached as to whether the dealer incurred a use tax liability measured by fair rental value because of that particular use. You do not believe that a test period should be used to decide which type of use was the principal use of the aircraft and then all use determined to be either taxable or nontaxable based on the test.

For example, an aircraft from resale inventory is used by the dealer nine times before it is resold. Of the nine uses, three are leases, three are personal use, and three are air-taxi operations involving some common carriage of persons or property. In such case, if we understand your theory correctly, you believe that the dealer owes use tax measured by fair rental value on the six leasing or personal uses, but does not owe use tax on the three air-taxi uses since they are exempt within

Revenue and Taxation Code Section 6366. We agree with this result. We do not believe a principal use test would apply. If it did, all of the uses would be taxable at fair rental value because the principal use of the aircraft was not within the Section 6366 exemption.

A principal use test is necessary when the question is whether or not the entire cost of an aircraft is subject to sales or use tax. A cut-off date must be established in which to decide if tax applies or else any tax determination might be barred by the statute of limitations. Such questions arise under Section 6366 and a test period is now specified in Regulation 1593. Such test period was the subject of Pacific Southwest Airlines v. State Board of Equalization, 73 Cal.App.3d 32.

Such test period is not necessary when the use of a resale inventory item is to be taxed based on Sections 6094 or 6244, which contemplates tax reporting for individual periods. Section 6366 can then be applied to each use rather than for a test period.

We note that, when the dealer's use of the aircraft is limited to leasing, the dealer must exercise his election to pay tax measured by fair rental value on or before the due date of a return for the period in which the equipment is first leased. The election must be made by reporting tax measured by fair rental value on the return for that period, regardless of whether the aircraft is used within or without California. If the dealer fails to make a timely election, use tax will apply measured by the cost of the aircraft (Sections 6094(d) and 6244(d); Regulation 1669(e)(1)(D).) If the dealer's use of the aircraft is not limited to leasing, then the tax applies measured by the fair rental value for use of the aircraft within California, but not for use without California (Sections 6094(c) and 6244(c); Regulation 1669(e)(1)(C).)

Your letter also discussed aircraft which the dealers have capitalized. We assume that depreciation has been claimed for such aircraft for income tax purposes. The Board's position is that such capitalization and depreciation is inconsistent with hold the aircraft for resale in the regular course of business. Tax would apply to the cost of such aircraft unless the common carrier exemption from Section 6366 applies. A principal use test would apply in such cases to determine whether or not the Section 6366 exemption applies.

We are sending a copy of this letter to Mr. Vogt in our Redding office. If you have further questions, feel free to write this office.

Sincerely,

Donald Hennessy
Tax Counsel

DJH:po

Cc: R. L. Vogt
Redding